

STATE OF MICHIGAN  
COURT OF APPEALS

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KELLY JO BEACH,

Plaintiff-Appellee,

v

KELLY AUTOMOTIVE GROUP, INC.,

Defendant-Appellant.

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UNPUBLISHED

April 15, 2008

No. 274142

Ingham Circuit Court

LC No. 04-000442-AV

Before: Fort Hood, P.J., and Talbot and Servitto, JJ.

PER CURIAM.

Defendant appeals by leave granted from the circuit court order awarding appellate attorney fees to plaintiff. Defendant also challenges the circuit court's affirmance of the district court's award of attorney fees to plaintiff. Because we find no abuse of discretion in the award of attorney fees, we affirm.<sup>1</sup>

The lawsuit underlying this attorney fee dispute arose in 2002 when defendant performed repairs on plaintiff's car. Plaintiff claimed that defendant engaged in deceptive repair practices, and sued defendant under the Motor Vehicle Service and Repair Act (MVSRA), MCL 257.1301 *et seq.* Following a bench trial, the district court entered judgment for plaintiff in the amount of \$11,716. Pursuant to the statutory attorney fee provision, MCL 257.1336, plaintiff's counsel sought fees of approximately \$69,890. The district court reduced the fee award to \$51,917. Defendant appealed the judgment and the fee award to the circuit court. The circuit court affirmed the judgment and the attorney fee award. Subsequently, the circuit court awarded plaintiff \$53,450 in appellate attorney fees.

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<sup>1</sup> A previous panel already rejected plaintiff's jurisdictional claim regarding the Court's authority to address the district court award. *Beach v Kelly Automotive Group, Inc.*, unpublished order of the Court of Appeals, entered August 29, 2007 (Docket No. 274142). We similarly reject this same challenge repeated here on appeal. See *Bonner v Chicago Title Ins Co*, 194 Mich App 462, 472; 487 NW2d 807 (1992).

Defendant challenges both fee awards. We review the lower courts' determination as to the reasonableness of attorney fees for abuse of discretion. *Windemere Commons I Ass'n v O'Brien*, 269 Mich App 681, 682; 713 NW2d 814 (2006). An abuse of discretion occurs when a trial court chooses an outcome falling outside the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006).

At the outset, we note that this case involves a consumer protection statute. We have explained that the attorney fee provisions in these statutes "are essential to legal redress." *Lavene v Winnebago Industries*, 266 Mich App 470, 476; 702 NW2d 652 (2005). The monetary value of the damages in such cases is often low and the attorney fee award in these cases must be sufficient to provide a reasonable return on the attorneys' time investment; otherwise, not only is the remedial purpose of the statute thwarted, it would be economically impossible for attorneys to represent their clients. See *Jordan v Transnational Motors, Inc*, 212 Mich App 94, 98-99; 537 NW2d 471 (1995). Several factors should be considered when assessing the reasonableness of requested attorney fees:

(1) the time and effort required, the novelty and difficulty of the issue involved, and the skill needed to perform the service properly; (2) the likelihood that acceptance of the case will preclude other employment for the attorney; (3) the fee customarily charged in the same locality for similar legal services; (4) the amount of money involved and the result obtained; (5) the time limitations imposed by the circumstances of the case or the client; (6) the nature and length of the professional relationship with the client; (7) the experience, reputation, and ability of the attorney performing the service; and (8) whether the fee is fixed or contingent. *Windemere Commons I Ass'n v O'Brien*, *supra*, at 683.

Defendant first argues that the district court erred by failing to consider the monetary value of the damages when awarding the attorney fees. To the extent the court believed that it was entirely precluded from considering the monetary value of the damages, the court was mistaken. However, the record indicates that the district court cited to and considered most, if not all, of the relevant factors listed in *Windemere*, *supra* at 683. The trial court did not, and should not, as apparently encouraged by defendant, place more emphasis on one factor (the result obtained) than others. After a review of the record, we are satisfied that the trial court properly considered and applied the "reasonableness" factors and was within its discretion in determining that plaintiff's attorney fee awarded was reasonable. *Maldonado*, *supra* at 388.

Defendant next asserts that the district court erred by ignoring the contingent fee agreement between plaintiff and her attorney. While defendant notes that the existence of a contingency fee arrangement is a factor that can be considered when evaluating the reasonableness of attorney fees, *Morris v Detroit*, 189 Mich App 271, 279; 472 NW2d 43 (1991), defendant points to no Michigan case that indicates the existence of a contingent fee agreement will limit the amount of attorney fees recovered in consumer protection cases.

In any event, the fee agreement in issue includes a provision specifically addressing the possibility of an attorney fees award:

In the event the ATTORNEY achieves an award for her fees and costs by whatever means during the pendency of the case, CLIENT agrees the ATTORNEY shall receive the award. *In the event of a final attorney fee and cost award, CLIENT agrees that the ATTORNEY shall receive that award if it is greater than the hourly or contingency amount. . . .* [Emphasis added.]

Thus, contrary to defendant's assertion otherwise, the agreement anticipates an award of attorney fees in excess of the contingency fee and specifically indicates that such an award will go to the attorney.<sup>2</sup>

Defendant also claims that the circuit court erred by accepting an unreasonable number of hours recorded by plaintiff's attorney in the appeal to the circuit court. Both parties presented expert witness testimony to support their competing positions concerning the reasonableness of the hourly rate claimed by plaintiff's counsel and the number of hours necessary to perform the appellate services in this matter. In essence, defendant is asking this Court to reweigh the testimony presented by the competing experts regarding the number of hours that a reasonably competent attorney would have spent on the appeal. As noted in *Dragoo v Dragoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997), "[t]his Court gives special deference to a trial court's findings when they are based on the credibility of the witnesses."

The record indicates that the circuit court considered each expert's testimony, and also considered the particular (and apparently convoluted) factual issues presented in the appeal. Ultimately the circuit court granted an award based on a reduced number of hours. We find that the circuit court did not abuse its discretion in establishing the number of hours for which plaintiff's counsel was entitled to compensation and the hourly rate at which such hours should be compensated. *Maldonado, supra* at 388.

Lastly, defendant argues that plaintiff's counsel's use of quarter-hour billing increments was improper. Notably, defendant points to no specific impropriety in plaintiff's billing statements. Rather, defendant maintains that the use of quarter-hour increments necessarily results in inflated time records. Without weighing in on whether the use of one-tenth hour billing increments is the better practice for recording attorneys' time, we find nothing in the record before us that requires an across-the-board reduction of hours and defendant has offered

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<sup>2</sup> Moreover, the fee agreement in issue provides a client with the opportunity to choose either paying the attorney's hourly fee or paying a contingent fee. Plaintiff chose the contingency fee arrangement, and the considerations that may have gone into her deciding to retain counsel on the contingency basis do not necessarily reflect what plaintiff's expectations might have been on behalf of her attorney. Defendant's argument also ignores two significant limitations on attorney fee awards. First, the statutory requirement that fees be "reasonable." MCL 257.1336. Second, an ethical rule exists specifically preventing attorneys from collecting "clearly excessive" fees. MRPC 1.5(a). These limitations should be sufficient to safeguard the legal system against the abuses envisioned by defendant.

no evidence that plaintiff's counsel actually, rather than hypothetically or assumingly, inflated her billing through use of quarter-hour increments.

Affirmed.

/s/ Karen M. Fort Hood

/s/ Michael J. Talbot

/s/ Deborah A. Servitto